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ACTION EUR-00

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INFO LOG-00 NP-00 AID-00 AMAD-00 CIAE-00 INL-00 DODE-00
SRPP-00 DS-00 FBIE-00 UTED-00 VC-00 FRB-00 H-00
TEDE-00 INR-00 JUSE-00 LAB-01 L-00 VCE-00 M-00
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O 041636Z MAR 04
FM AMEMBASSY BERLIN
TO SECSTATE WASHDC IMMEDIATE 9131
INFO EU MEMBER STATES PRIORITY
FRG COLLECTIVE PRIORITY
AMEMBASSY RABAT PRIORITY
DEPT OF JUSTICE WASHDC PRIORITY

UNCLAS BERLIN 000808

DEPT FOR EUR/AGS, L/LEI, S/CT

E.O. 12958: N/A
TAGS: PTER, KJUS, PGOV, GM
SUBJECT: TERRORISM: FEDERAL HIGH COURT OVERTURNS MOTASSADEQ
CONVICTION, ORDERS RETRIAL

1. ON MARCH 4, THE FEDERAL HIGH COURT (BUNDESGERICHTSHOF) IN KARLSRUHE OVERTURNED THE HAMBURG REGIONAL COURT'S CONVICTION OF SUSPECTED 9/11 ACCOMPLICE MOUNIR EL-MOTASSADEQ AND ORDERED A RETRIAL IN HAMBURG. IN ITS 21-PAGE DECISION, THE HIGH COURT ARGUED THE HAMBURG COURT HAD FAILED TO ADEQUATELY CONSIDER, IN WEIGHING THE EVIDENCE, THE FACT THAT AUTHORITIES HAD REFUSED TO MAKE AVAILABLE POTENTIALLY EXCULPATING TESTIMONY FROM 9/11 SUSPECT RAMZI BINALSHIBH.

2. THE HIGH COURT ARGUED THAT BINALSHIBH'S TESTIMONY AT THE TRIAL, IN PERSON OR IN THE FORM OF INTERROGATION TRANSCRIPTS, WAS "IN PRINCIPLE" NECESSARY. IT FURTHER ARGUED THAT EFFORTS TO PROTECT STATE SECRETS SHOULD NOT BURDEN THE ACCUSED IN A CRIMINAL CASE. THE HIGH COURT RULED THAT, IN NOT ADEQUATELY CONSIDERING THE EFFECT OF THE LACK OF BINALSHIBH'S TESTIMONY, THE HAMBURG COURT DID NOT ACCORD MOTASSADEQ THE BENEFIT OF THE DOUBT.

3. IN A MARCH 4 PRESS RELEASE (E-MAILED TO EUR/AGS WITH AN ENGLISH SUMMARY), THE HIGH COURT STATES ITS DECISION IN THE MOTASSADEQ CASE WAS IN NO WAY INFLUENCED BY THE HAMBURG COURT'S ACQUITTAL OF HAMBURG CELL SUSPECT ABDELGHANI MZOUZI ON FEBRUARY 5. (NOTE. A DIFFERENT PANEL OF JUDGES FROM THE

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HAMBURG REGIONAL COURT RULED ON MZOU DI. END NOTE).

4. IN A BRIEF PRESS TATEMENT, INTERIOR MINISTER OTTO SCHILY
TERMED THE HIGH COURT RULING "REGRETTABLE."
COATS

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